

## DEDUCTION OF VAT ON INVESTMENT COSTS IN CASE OF ABANDONMENT OF THE PROJECT

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**Abstract:** The legal provisions regarding the right to deduct VAT are provided in art. 145 and art. 146 of Law no. 571/2003 on the Fiscal Code (Fiscal Code 2003) and art. 297 and 299 of Law no. 227/2015 on the Fiscal Code (Fiscal Code 2015).

The provisions of point 67 par. (1) of the Methodological Norms for the application of the Fiscal Code 2015 establish the birth of the right to deduct VAT in the event of a taxable person who intends, confirmed by objective evidence, to start an economic activity independently, within the meaning of art. 4 of the Sixth Directive, the equivalent of art. 269, para. (2) of the Fiscal Code, and which records expenses for this purpose.

However, by reference to the provisions of point 67 par. (17) of the Methodological Rules, the right to deduct VAT remains acquired when the taxable person has never used the goods and services purchased for the purpose of carrying out taxable operations only when the abandonment of the project was due to objective reasons which could not be anticipated or controlled and not dependent on his will.

The jurisprudence of the CJEU has established in case C-110/94 Inzo, case C-37/95 Ghent Coal Terminal NV or case C - 257/11, SC Gran Via Moinesti SRL that in the absence of fraudulent or abusive circumstances and subject to possible regularizations in accordance with the conditions laid down in Article 185 of Directive 2006/112, the right to deduct, once born, remains acquired even where the economic activity in question has not given rise to taxable transactions.

In connection with the inconsistency of the Methodological Norms with the jurisprudence of the CJEU, we note the need to formulate preliminary questions to resolve this issue of interpretation of the VAT Directive.

**Keywords:** Fiscal Code, deduct VAT, economic activity, taxable person